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09/773,241	01/31/2001	John C. Molander	8409	6142

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EXAMINER

KIDWELL, MICHELE M

ART UNIT PAPER NUMBER

3761

DATE MAILED: 03/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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# Office Action Summary

Application No.

09/773,241

Applicant(s)

MOLANDER ET AL.

Examiner

Michele Kidwell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 05 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION*****Claim Objections***

Claim 1 is objected to because of the following informalities: the claim has been amended to recite that the at least one discontinuity is neither directly nor indirectly connected to the outer periphery. It is unclear how the at least one discontinuity can be neither directly nor indirectly connected to the outer periphery when the side panel includes both the outer periphery and the at least one discontinuity. If both elements were present in the side panel, it would seem that they could at least be considered indirectly connected since both elements are part of the same structure. The written specification does not support the fact that the at least one discontinuity is neither directly or indirectly connected to the outer periphery and as much as the drawings disclose this limitation, the examiner contends that the at least one discontinuity is at least indirectly connected to the outer periphery by the area generally designated by reference character "200" as shown in figure 1. Appropriate correction and/or clarification are required.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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Claims 1 – 3, 5 – 10, 14 and 16 – 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Aledo et al. (US 4,850,988).

As to claim 1, Aledo discloses a disposable article comprising a containment assembly (Figure 3 member 22) longitudinal edges, at least one side panel carried by the containment assembly (Figure 3 members 15 and 16), and extending outwardly, the at least one side panel including an outer periphery and an inner region having at least one discontinuity limited to the interior region (Figure 3 member 18) for dividing a tensile force applied to the at least one side panel into a waist-directing force and a leg-directing force wherein the at least one discontinuity is neither directly or indirectly connected (inasmuch as disclosed by applicant) to the outer periphery as set forth in col. 3 lines 44-54 and col. 4 lines 10-17.

As to claim 2, Aledo discloses a disposable article wherein at least one side panel further includes a waist region and leg region separated thereof by the at least one discontinuity (Figure 3 member 18), the waist region is configured to transmit the waist-directing form, and the leg region is configured to transmit the leg-directing force (col. 4 lines 10-17).

As to claim 3, Aledo discloses a disposable article wherein the leg region and the waist region diverge from each other in a direction from an outer panel of the side panel toward a longitudinal centerline of the containment assembly (Figure 2 side panels, not labeled but are shown as diverging outwardly).

As to claim 5, Aledo discloses a disposable article wherein the waist region has a greater width than the leg region (Figure 1 and 2 where the areas 15, 19, 16 are extending further than area 13).

As to claim 6, Aledo discloses a disposable article wherein at least one discontinuity is defined by at least one cut line. (Figure 2 member 18).

As to claim 7, Aledo discloses a disposable article wherein at least one cut line is rectilinear (Figure 3 member 17).

As to claim 8, Aledo discloses a disposable article wherein at least one cut line is disposed substantially parallel with a first lateral edge of the side panel (Figure 3 member 17 parallel with waist edge).

As to claim 9, Aledo discloses a disposable article wherein at least one discontinuity includes at least one opening. (Figure 3 members 17 at end edge).

As to claim 10, Aledo discloses a disposable article wherein at least one opening is defined by a substantially triangular open area or a substantially rectangular open area or a substantially trapezoidal open area (Figure 3 members 17 and 18 make up a substantially triangular open area).

As to claim 14, Aledo discloses a disposable article wherein at least one cut line is curvilinear (Figure 3 member 18).

As to claims 16 and 17, Aledo discloses a disposable article wherein the waist-directing force in the waist region of the side panel extends at an angle ranging from about 0 to about 45° relative to a lateral centerline of the disposable article, and wherein the leg-directing force in the leg region of the side panel extends at an angle ranging

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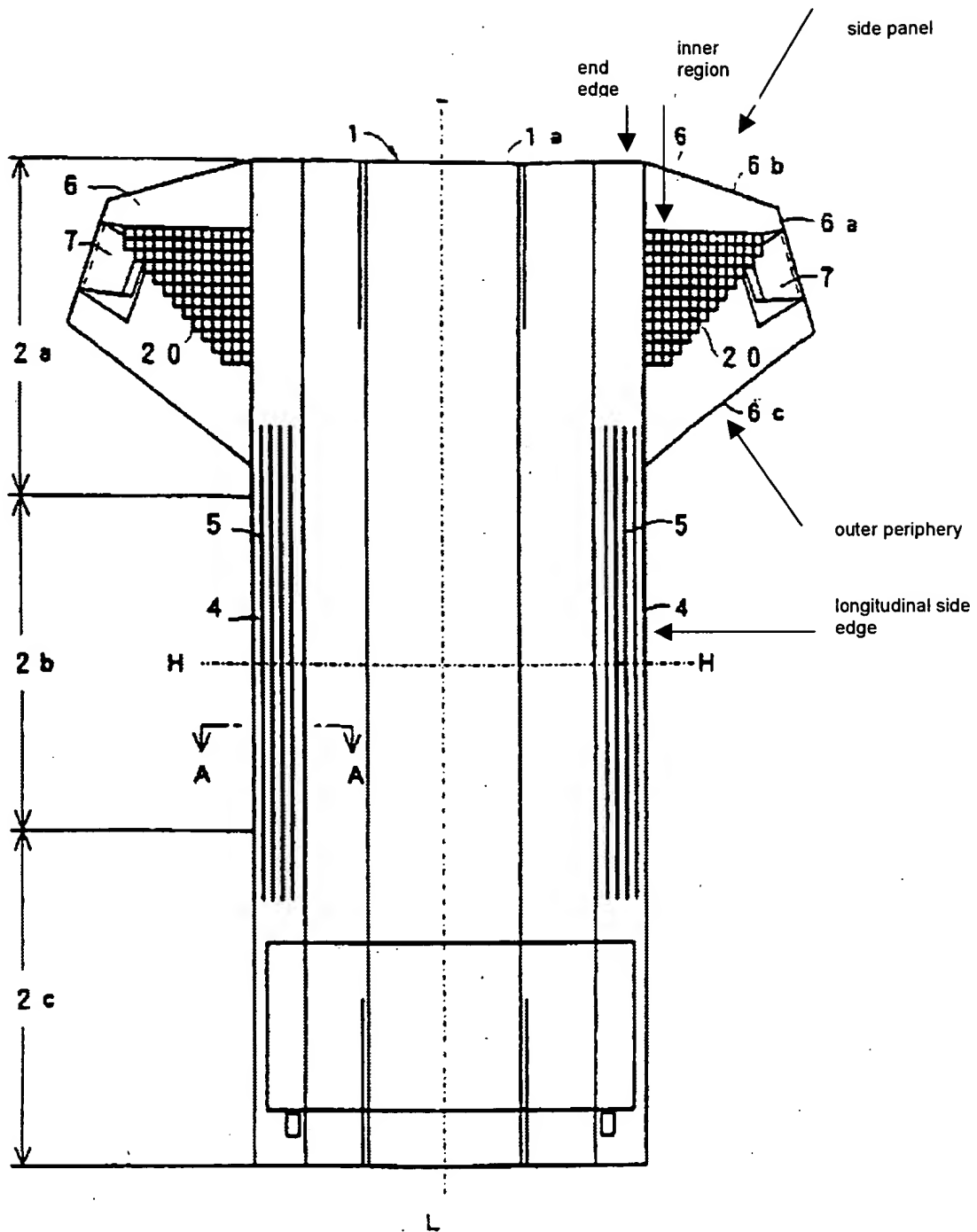
from about 10 to about 35° relative to the lateral centerline of the disposable article; wherein the waist-directing force in the waist region of the side panel extends at an angle ranging from about 10 to about 150 relative to a lateral centerline of the disposable article, and wherein the leg-directing force in the leg region of the side panel extends at an angle ranging from about 20 to about 300 relative to the lateral centerline of the disposable article. (Figures 1, 2, and 3 members 15, 16).

Claims 1 – 2, 6 – 7 and 9 – 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Heki et al. (US 5,906,008).

As to claim 1, Heki et al. (hereinafter “Heki”) discloses a disposable article comprising a containment assembly (Figure 1) having a first longitudinal edge and a second longitudinal edge opposed thereof, a first end edge and a second end edge opposed thereto, the first and second longitudinal edges being configured to contact the legs of the wearer, and the first and the second end edges being structured and configured to contact the waist of the wearer; and at least one side panel (6) carried by the containment assembly (Figure 1), and extending outwardly from the first longitudinal edge of the containment assembly adjacent the first end edge of the containment assembly, the at least one side panel including an outer periphery and an inner region having at least one discontinuity (20) limited to the interior region for dividing a tensile force applied to the at least one side panel into a waist-directing force and a leg-directing force wherein the at least one discontinuity is neither directly or indirectly connected (inasmuch as disclosed by applicant) to the outer periphery as set forth in

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col. 10, lines 3 – 37 and in figure 1 (as shown below) and in figure 6.





As to claim 2, Heki discloses a disposable article wherein at least one side panel further includes a waist region (top of article as shown in figure 1) and leg region (area generally designated by reference characters "4" and "5" in figure 1) separated thereof by the at least one discontinuity (20), the waist region is configured to transmit the waist-directing form, and the leg region is configured to transmit the leg-directing force as set forth in col. 12, line 49 to col. 13, line 5.

As to claim 6, Heki discloses a disposable article wherein at least one discontinuity is defined by at least one cut line as set forth in col. 10, lines 17 – 20.

With reference to claim 7, Heki discloses a disposable article wherein the at least one cut line is rectilinear as set forth in figure 6.

As to claim 9, Heki discloses a disposable article wherein at least one discontinuity includes at least one opening as set forth in col. 10, lines 17 – 20.

As to claim 10, Heki discloses a disposable article wherein at least one opening is defined by a substantially triangular open area or a substantially rectangular open area or a substantially trapezoidal open area as set forth in figure 6.

With reference to claim 11, Heki discloses a disposable article wherein the at least one discontinuity is defined by a plurality of cut lines as set forth in figure 6.

With respect to claim 12, Heki discloses a disposable article wherein the plurality of cut lines includes three spaced cut lines as set forth in figure 6.

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***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 4, 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aledo et al. (US 4,850,988).

As to claims 4, 18, and 19, Aledo discloses a disposable article with elastic extensibility in the waist and leg areas (Figure 1 members 13 and 14), but fails to disclose specifically wherein the waist region has an extensibility varying from about 5g/mm to about 50 g/mm and the leg region has an extensibility varying from about 1 g/mm to about 30 g/mm; wherein the side panel has an extensibility ranging from about 1 g/mm to about 50 g/mm; wherein the side panel is elastic and has an elasticity of at

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least about 5%. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the waist and leg elasticity with specific parameters, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

Claims 13 – 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heki et al. (US 5,906,008).

The difference between Heki and claim 13 is the provision that the cut lines are configured in a specific arrangement.

Heki teaches an article with a plurality of cut lines as shown in figure 6.

It would have been obvious to one of ordinary skill in the art to arrange the cut lines as desired in order to produce the most effective product since it has been held that rearranging parts of an invention involves only routine skill in the art.

The difference between Heki and claim 14 is the provision that at least one cut line is curvilinear.

Heki teaches an article with a plurality of cut lines as shown in figure 6.

Absent a critical teaching and/or unexpected result, the examiner contends that the claimed curvilinear cut lines vs. the rectilinear cut lines taught by Heki is an obvious matter of design choice that does not patentably distinguish the claimed invention from the prior art.

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The difference between Heki and claim 15 is the provision that the cut lines are curvilinear.

Heki teaches an article with a plurality of cut lines disposed to define a substantially triangular array of spaced cut lines as shown in figure 6.

Absent a critical teaching and/or unexpected result, the examiner contends that the claimed curvilinear cut lines vs. the rectilinear cut lines taught by Heki is an obvious matter of design choice that does not patentably distinguish the claimed invention from the prior art.

### ***Response to Arguments***

Applicant's arguments with respect to claims 11 – 13 and 15 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's arguments filed January 5, 2005 have been fully considered but they are not persuasive.

In response to the applicant's arguments that the discontinuity is limited to an inner region, the examiner contends that inasmuch as the applicant has defined indirectly or directly connected, the structure of both Heki and Aledo meet the claimed limitations.

If both elements were present in the side panel, it would seem that they could at least be considered indirectly connected since both elements are part of the same structure. The written specification does not support the fact that the at least one discontinuity is neither directly or indirectly connected to the outer periphery and as

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much as the drawings disclose this limitation, the examiner contends that the at least one discontinuity is at least indirectly connected to the outer periphery by the area generally designated by reference character "200" as shown in figure 1.

In response to applicant's argument that the discontinuity of Aledo is not used to divide a tensile force into a waist directing force and a leg directing force, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963).

With respect to the applicant's argument that Aledo does not teach any preexisting ranges for extensibility or elasticity, the examiner disagrees.

The disclosure of elastic elements having elastic properties and extensibility of the article by Aledo in col. 2, lines 22 – 47 provides the basis for the range of extensibility and elasticity. The article obviously would have these properties based on the written disclosure and discovering the optimum value or range for these properties would involve only a level of ordinary skill in the art.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.**

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See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 571-272-4935. The examiner can normally be reached on Monday - Friday, 5:30am - 2:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Schwartz can be reached on 571-272-4390. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Michele Kidwell  
Examiner  
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